

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

VIRGEN P. MERCADO ALVAREZ * Case No. 10-7374
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Debtor(s) *
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-----* December 1, 2010
 * Old San Juan,
 * Puerto Rico

CONFIRMATION HEARING
BEFORE THE HONORABLE ENRIQUE S. LAMOUTTE
FEDERAL BUILDING, OLD SAN JUAN, PUERTO RICO

APPEARANCES:

For the Trustee: Juliel Perez, Esq.

For the Debtor: Jose Prieto, Esq.

For the Creditors: Lucas Cordoba, Esq.,
 Charles Gilmore, Esq.
 For Operating Partners

CD: Official Courtroom Deputy

(Proceedings taken by electronic recording;
transcription produced by transcription service)

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1075 Carr. 2 Plaza Suchville #302
Bayamón, Puerto Rico 00959
Tel. # (787) 783-6623; (787) 617-9487

P R O C E E D I N G S

(2:51 p.m.)

(Case is called)

MR. PRIETO: Good afternoon to the members of the Court. Attorney José Prieto on behalf of Debtor.

MR. CÓRDOBA: Good afternoon, Your Honor. Lucas Córdova and Charles Gilmore for Operating Partners.

MS. PÉREZ: Juliel Pérez on behalf of Trustee in this case José Carrión.

Your Honor, in this case, the Trustee does now favorably recommend of the plan dated August 13, 2010, and we're going to close the 341 meeting of creditors since they comply with all of the tax returns for the years 2006 and 2009 under 1309 -- 8.

THE COURT: There's an objection by Operating Partners.

MR. CÓRDOBA: Yes, Your Honor. It's a supplemental objection. The objection was filed before the supplemental objection was filed about 10 or 15 days ago, and no answer from the Debtor yet.

MR. PRIETO: Your Honor, if I may?

THE COURT: Yes, Counsel.

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1 MR. PRIETO: I was revising again the
2 supplemental objection. Basically, the objection
3 states on more of the same grounds. We're going to
4 have to make a reply to the objection once again.

5 The secured creditor (indiscernible)
6 Operating Partners it's trying to recover \$7,600 in
7 attorneys' fees for filing a case in the instant --
8 in the first -- in the District Court of Fajardo.
9 And when the bankruptcy case was -- they didn't get a
10 judgment, and the case was filed in order to cure the
11 arrears.

12 Then, the Trustee -- the Court granted the
13 objection filed by this attorney in behalf -- on
14 behalf of Virgen P. Mercado Álvarez, and now it's a
15 supplemental objection, and there's also a leave to
16 file an appeal pending, that it was granted an
17 extension of time to file the appeal.

18 At this moment, if the objection -- the
19 supplemental objection was filed later than the --
20 than the --

21 THE COURT: Supplemental objection to what?

22 MR. PRIETO: To objection to the
23 confirmation of the plan.

24 THE COURT: And the grounds for the

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1 objection are?

2 MR. CÓRDOBA: For the supplemental objection
3 to confirmation?

4 THE COURT: Supplemental, original. What is
5 the --

6 MR. CÓRDOBA: The grounds are that --

7 THE COURT: -- objection by the Operating
8 Partners to -- to --

9 MR. CÓRDOBA: The grounds are the --

10 THE COURT: -- to having the plan dated
11 August 13, 2010, confirmed?

12 MR. CÓRDOBA: Your Honor, the grounds are
13 briefed in detail in the motion.

14 Essentially, the position is that the plan
15 does not comply to (indiscernible) 22 (sic), because,
16 if Debtor is proposing in the plan to continue making
17 regular payments on other residential mortgage, she
18 has to cure all the arrears. And all the arrears
19 include this entire amount, because it's a
20 prepetition amount.

21 And it's -- and, according to 1322 (e), the
22 amount of arrears or the amount of the default that
23 must be cured to the plan is determined under the
24 underlying mortgage agreement and under non-

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1 bankruptcy law.

2 So, there's no bankruptcy provision
3 applicable here to which the reasonableness standard
4 or test can be attached.

5 THE COURT: Isn't that what was argued or --
6 isn't that really an argument regarding the objection
7 to the claim?

8 MR. CÓRDOBA: It's a -- it's a different
9 argument, because the Court has not entertained the
10 issue under the context of confirmation, and whether
11 the plan complies with --

12 THE COURT: Well, I disallowed -- I allowed
13 -- I agreed to the objection to claim. So, I
14 disallowed the fees being requested without prejudice
15 to filing a detailed statement.

16 So, --

17 MR. CÓRDOBA: There's no de --

18 THE COURT: -- as to this Court, unless I'm
19 overturned on appeal, the Debtor does not have to pay
20 the fees, because I've already entered an order
21 disallowing them.

22 So, if that is the grounds, then I would --
23 I would confirm the plan and request a transcript.
24 And, if I'm overturned on appeal, then we'll see in

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1 the case then.

2 MR. CÓRDOBA: Our position, Your Honor, is
3 that the objection -- that the claim or the order
4 regarding the claim was analyzed under 506. And 506
5 is not applicable, because 1322, for purposes of
6 confirmation, displaces 506 expressly.

7 So, we understand that analysis is not
8 applicable under the confirmation.

9 THE COURT: 1322?

10 MR. CÓRDOBA: 1322 (e), which is the
11 provision that establishes what's the amount to be
12 cured under the plan if the Debtor elects 1322 (b)
13 (5).

14 (Documents are reviewed)

15 MR. CÓRDOBA: That section makes 506
16 inapplicable, and the question of whether the claim
17 is --

18 THE COURT: Well, I don't know if it's
19 inapplicable. It says "Notwithstanding".

20 MR. CÓRDOBA: "Notwithstanding". And the
21 courts have consistently held -- multiple courts,
22 from various districts, including this one -- that
23 that means that 506 is displaced.

24 (Documents are reviewed)

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1 MR. CORDOBA: And the issue here is that the
2 -- that the complaint was filed prepetition, a year
3 before the petition was actually filed.

4 These are not fees requested post-petition.
5 (Documents are reviewed)

6 THE COURT: I see your point. The point is
7 that I have not decided whether the reasonable
8 standard applies to prepetition fees.

9 MR. CORDOBA: Correct.

10 THE COURT: And I --

11 MR. CORDOBA: And the court specifically --

12 THE COURT: -- and I may have not.

13 I'm not saying that I agree with you. I'm
14 saying that I have not specifically --

15 MR. CORDOBA: Addressed that issue.

16 THE COURT: -- addressed that issue. And I
17 think I should.

18 So, I'll -- I'll grant you time to answer
19 the supplemental objection, and then out take the
20 matter under advisement.

21 How much time do need?

22 MR. PRIETO: 21 days, Your Honor.

23 THE COURT: I'm going to continue the
24 hearing without a date.

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1 (Documents are reviewed)

2 MR. CÓRDOBA: Thank you.

3 MR. PRIETO: Thank you, Your Honor.

4 THE COURT: You're excused.

5 (Hearing in this matter is hereupon concluded for
6 this day)

7 (3:03 p.m.)

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1 TRANSCRIBER CERTIFICATION

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3 I, CRYSTAL INCHAUSTEGUI BREAZ, Transcriber,
4 do hereby certify that the foregoing transcript was
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6

7 I CERTIFY that all "(inaudible)" were
8 carefully reviewed and found to be as written.

9

10 I FURTHER CERTIFY that I am not interested in
11 the outcome of the case mentioned in said caption.

12

13 WITNESS MY HAND this 27 day of the month of
14 December, 2010 in San Juan, Puerto Rico.

15

16 S/ CRYSTAL INCHAUSTEGUI

17 CRYSTAL INCHAUSTEGUI BREAZ

18

19 I, DIANE BREAZ, RPR and Official Court Reporter for
20 the District Court of Puerto Rico, certify that the
21 foregoing transcript has been verified and certified
22 by me.

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S/ DIANE BREAZ

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